Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-8341

IRENE D. HAMILTON,
Appellant,

v.

STATE OF INDIANA,
ex rel. RALPH W. VAN NATTA,
Commissioner of Bureau of Motor Vehicles,
Appellee.

On Appeal from the ~~Supreme Court~~ Court of Appeals of Indiana

JURISDICTIONAL STATEMENT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No.....

IRENE D. HAMILTON,
Appellant,

v.

STATE OF INDIANA,
ex rel. RALPH W. VAN NATTA,
Commissioner of Bureau of Motor Vehicles,
Appellee.

On Appeal from the Supreme Court of Indiana

JURISDICTIONAL STATEMENT

JURISDICTION STATEMENT

Appellant appeals from the judgment of the Indiana Supreme Court, entered on September 18, 1975, denying Appellant's petition to transfer from the decision of

the Indiana Court of Appeals, affirming the trial court's judgment which declared Appellant to be an habitual traffic offender and suspended Appellant's driver's license for ten (10) years. Appellant submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the Indiana Supreme Court denying transfer from the decision of the Indiana Court of Appeals is attached hereto as Appendix A. The petition was denied without opinion but with one dissenting judge. The denials of petitions to transfer are not reported in any official reporter system.

The Indiana Court of Appeals decided the case in favor of the Appellee and that opinion is reported in 323 N.E. 2d 659. The opinion of that court

is attached hereto as Appendix B. (That opinion has not, as yet, been printed in the official Indiana Reporters).

JURISDICTION

This suit was brought by the State of Indiana to have the Appellant declared an habitual traffic offender and suspend Appellant's driver's license for ten (10) years. In the trial court, in the Indiana Court of Appeals and in the Indiana Supreme Court, Appellant raised the question of the validity of the Indiana statute in question on the basis that it is repugnant to the Constitution of the United States. The decision in each court was in favor of the validity of the statute in question.

The judgment of the Indiana Supreme Court denying the petition to transfer from the decision of the Indiana Court of Appeals was entered on September 18, 1975, and notice of appeal was filed in that Court on the 10th day

of December, 1975. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Sections 1257(2) and 2101(c). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment:

Dent v. Virginia, 129 U.S. 114 (1889);

Ex Parte Garland, 71 U.S. (4 Wall.) 333 (1867);

Cummings v. Missouri, 71 U.S. (4 Wall.) 277 (1867).

STATUTE INVOLVED

Appellant challenges the validity of the Acts of the General Assembly of 1972, P.L. 81, §1, p. 510, codified as I.C. 1971, 9-4-13-3 (Ind. Ann. Stat. §47-2336). Its verbatim text is as follows:

"(a) The term "habitual traffic offender" means any person who, within a

ten (10) year period, accumulates convictions of the number and type specified in paragraph (1), (2), (3), and (4) of this subsection. In determining the ten (10) year period, at least one (1) of such offenses must occur on or after the effective date (September 1, 1972) of this chapter.

(1) Two (2) or more convictions, singularly or in combination, not arising out of the same incident, of the following offenses:

(A) Reckless homicide;

(B) Voluntary or involuntary manslaughter resulting from the operation of a motor vehicle;

(C) Failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and

give the required information and assistance.

(2) Three (3) or more convictions, singularly or in combination, not arising out of the same incident, of the following offenses:

(A) Driving while under the influence of intoxicating liquor or narcotic or other habit-forming or dangerous, depressant or stimulant drugs;

(B) Operating a motor vehicle while his license to do so has been suspended or revoked;

(C) Operating a motor vehicle without a license to do so;

(D) Reckless driving;

(E) Drag racing or engaging in a speed contest in violation of law;

(F) Any offense punishable as a felony under the motor vehicle laws of Indiana, or any felony in the commission of which a motor vehicle is used;

(G) Failure of the driver involved in an accident resulting in property damage in excess of one hundred dollars ($100.00) to stop at the scene of the accident and give the required information or to otherwise fail to report the accident in violation of law.

Convictions for offenses enumerated in paragraph (1) of this subsection shall be taken and added to the convictions described in this paragraph for the purposes of this paragraph.

(3) Ten (10) or more convictions, singularly or in combination, not arising out of the same

incident, of any moving traffic violation of the type required to be reported to the bureau of motor vehicles. Convictions for offenses enumerated in paragraphs (1) and (2) of this subsection, shall be taken and added to the convictions described in this paragraph for the purposes of this paragraph.

(4) The offenses included in paragraph (3) of this subsection shall be deemed to include offenses under any valid town, city, or county ordinance in the state of Indiana which are required to be certified to the bureau.

(b) The term "conviction" means a judgment of guilt by a court, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed

any offense relating to the use or operation of a motor vehicle which is prohibited by law, or ordinance in Indiana.

(c) The term "commissioner" means the commissioner of the Indiana bureau of motor vehicles.

(d) The term "bureau" means the Indiana bureau of motor vehicles.

(e) The term "license" means any and all types of licenses or permits to operate a motor vehicle issued by the bureau. (I.C. 1971, 9-4-13-3, as added by Acts 1972, P.L. 81, §1, p. 510.)

There are additional statutory provisions in the entire act referred to as the "Indiana Habitual Traffic Offender Act"; however, such provisions are not relevant to the question raised by this appeal.

THE QUESTION PRESENTED

1. Is the United States Constitution Article I, Section 10, which provides that no person shall be convicted under any

ex post facto law violated by a state statute which provides that a person may be declared as an habitual traffic offender upon the occurrence of a certain number of specified traffic convictions, in a circumstance in which only one of the three (3) convictions needed for such classification has occurred after the passage of the act?

STATEMENT

On July 20, 1973, the Appellee, State of Indiana, filed a complaint in the form of an affidavit in the Circuit Court of Vanderburgh County, Indiana against the Appellant to declare the Appellant an habitual traffic offender. The Affidavit is as follows:

"AFFIDAVIT

Comes now TERRY NOFFSINGER, Chief Deputy Prosecutor of Vanderburgh County, and being first duly sworn upon his oath says:

(1.) That IRENE D. HAMILTON, 307 W. Missouri St., Evansville, Indiana, D.O.B. 12/16/18, is the

person named in the attached certification, which is hereby incorporated by reference and made a part of this affidavit;

(2.) That IRENE D. HAMILTON, was convicted of following offenses on the indicated dates within a ten year period prior to the date of filing this affidavit at least one of which was committed after September 1, 1972, all as appears from the attached certification:

07/06/63	Driving under the influence of liquor
01/07/64	Driving while suspended
06/23/65	Driving under the influence of liquor
06/02/67	Reckless driving
09/02/67	Reckless driving
12/30/70	Driving under the influence of liquor
01/19/73	Driving under the influence of liquor

(3.) That IRENE D. HAMILTON, is an habitual traffic offender as defined in I.C. 1971, 9-4-13-3 (a) as found in Burns' Ind. Ann. Stat. (1972 Supp.) §47-2336 (a);

WHEREFORE, TERRY NOFFSINGER, Chief Deputy Prosecutor of Vanderburgh County prays that the Court issue to IRENE D. HAMILTON, 306 W. Missouri St., Evansville, Indiana, a rule to show cause why she should not be adjudged an habitual traffic offender and be deprived of her driving privileges for ten (10) years." (Tr. p. 10)

/s/ Terry Noffsinger
Chief Deputy Prosecutor

(Record of Proceedings, pg. 10)

The Affidavit alleged that the Appellant, Irene D. Hamilton, had been convicted of seven (7) serious traffic offenses and that one (1) and only one (1)

of the convictions occurred after the effective date of the Indiana habitual traffic offender statute, which was September 1, 1972. The Affidavit plainly stated that the other six (6) convictions occurred between 1963 and 1970. The Appellant has never denied the truth of the convictions for driving offenses as set out in the Affidavit. Accordingly, no facts were ever in dispute in these proceedings. Prior to the trial, the Appellant raised, for the first time with the trial court, the federal question by means of a pleading designating "Special Defenses" on October 10, 1973, and that pleading contained the following defense:

"SPECIAL DEFENSES

I.

Comes now the defendant, Irene D. Hamilton, by her attorneys, Johnson, Carroll and Griffith, and for her first defense to the State's affidavit and rule to show cause, says:

1. That the statute upon which the State's claim is based, namely,

Burns' Annotated Statutes, Section 47-2336A (I.C. 1971, 9-4-13-3) is unconstitutional in that it violates the United States Constitution Article I, Section 10 and the State of Indiana's Constitution Article I, Section 24, providing that no person shall be convicted of an offense under any ex post facto law."

JOHNSON, CARROLL AND GRIFFITH

/s/ Charles C. Griffith
Charles C. Griffith

(Record of Proceedings, pgs. 77-78)

The trial court entered judgment against the Appellant.

The Appellant then filed a Motion to Correct Errors. She pointed out that the challenged statute was unconstitutional and void, violating the United States Constitution provision against ex post facto laws, inter alia (Record of Proceedings, pgs. 90-95).

Her Motion to Correct Errors was overruled and she initiated an appeal to the Court of Appeals of Indiana. In her brief in that court, she again presented the federal question. She cited the Constitution of the United States, Article I, Section 10 (Appellant's brief pg. 16). She cited Burgess -v- Salmon (1878) 97 U.S. 381, 24 L. ed 1104 (Appellant's brief pg. 19).

The Court of Appeals of Indiana ruled for the Appellee sustaining the trial court's judgment.

The Appellant timely petitioned the Indiana Court of Appeals for a rehearing which was denied. The Appellant then petitioned the Supreme Court of Indiana to review, or transfer, the judgment of the opinion of the Indiana Court of Appeals. In her petition to transfer to the Indiana Supreme Court, the Appellant again cited the Constitution of the United States, Article I, Section 10 (Petition to Transfer pg. 2). The Supreme Court of Indiana denied the petition to transfer sustaining

the Indiana Court of Appeals' decision and the trial court's judgment. There is no provision for a rehearing to the Indiana Supreme Court, Rule 12-B-(8) of the Indiana Rules of Appellate Procedure. Hence, the denial of the petition to transfer is the final judgment of the Indiana Supreme Court. The denial of the petition to transfer was rendered on September 18, 1975.

Appellant filed a Notice of Appeal to this Court in the Supreme Court of Indiana on December 10, 1975, a copy of which is attached hereto as Appendix D.

THE QUESTION IS SUBSTANTIAL

An ex post facto law is a statute which imposes a punishment in addition to the punishment prescribed by the existing law, Ex parte Garland, 71 U.S. (4 Wall.) 333, 18 L.Ed. 366 (1867). An ex post facto law also increases the severity of the manner of punishment. Lindsey v. Washington, 301 U.S. 397, 81 L.Ed. 1182, 57 S.Ct. 797 (1937).

The Indiana statute in question violates both of the above-stated definitions of an ex post facto law insofar as it attempts to use convictions prior to the effective date of the statute (September 1, 1972) as a basis for "counting" the requisite number of convictions after which a person will be declared an habitual traffic offender. In the instant situation, the fact is uncontroverted that the Appellant had but one conviction for any driving offense subsequent to the effective date of the act. The statutory number of driving offenses of the type for which she was convicted necessary for one to be declared an habitual traffic offender is three. The Indiana Court of Appeals, in its opinion which found that the statute was constitutional, and not an ex post facto law, based its decision on a previous opinion of the Indiana Supreme Court styled State ex rel. Van Natta v. Rising, ____Ind.____, 310 N.E. 2d 873 (1974). In that case, the Court of Appeals side-stepped

the issue of the constitutionality of the act in question by misinterpreting the law to be that the prohibition against ex post facto laws applies only to criminal proceedings. While it is true that actions filed by the State of Indiana under the Indiana Habitual Traffic Offenders Act are civil in nature, nonetheless, the prohibition against ex post facto laws applies if the nature of the penalty imposed is essentially criminal and punishment in nature. Burgess vs. Salmon, 97 U.S. 381, 24 L.Ed. 1104 (1878); Flemming v. Nestor, 363 U.S. 603, 4 L.Ed. 2d 1435, 80 S. Ct. 1367 (1960).

There was a dissenting opinion in State ex rel. Van Natta v. Rising (supra). That dissenting opinion was rendered by the same Justice of the Indiana Supreme Court who dissented from the petition to transfer in this appeal. The dissent held:

> "That the Habitual Traffic Offenders Act is a law which was not in existence at the time of two

> of these convictions but now provides further penalties based on these prior convictions. A law such as this which by its necessary operation has retrospective application to crimes committed before its enactment and by its relation to these offenses increases the penalty upon a citizen is within the definition of an ex post facto law." 310 N.E.2d at page 876.

The Court of Appeals, in reaching its decision that the statute was not an ex post facto law, failed to analyze the body of law concerning the very same question when applied to habitual criminal acts. For example, a Kentucky lower court found a defendant to be an habitual criminal when he had only one conviction after the effective date of the Kentucky habitual criminal statute. On appeal, the decision was reversed in Thacker v. Commonwealth, 228 Ky. 819, 16 S.E.2d 448 (1929). The reasoning of the Kentucky court is pertinent in this case:

"But a different question in involved in prosecutions under the habitual criminal feature of our prohibition statute, since, as we have held in numerous cases, in order for the felony punishment therein provided for a second offense to be inflicted, it must appear and be shown that the first conviction was for an offense committed since March 22, 1922, when the prohibition act went into effect. Our opinions so holding, and which are in complete accord with those from other jurisdictions upon the subject, are based upon the proposition that it is incompetent for the Legislature to provide for an increased punishment for a second conviction, when the first offense of which defendant was convicted was committed before the enactment of the statute so prescribing***."
16 S.W. 2d 448, 449 (Emphasis Supplied)

During the period of time in which the Appellant was arrested and convicted of traffic offenses other than the one

conviction after the effective date of the act, the State of Indiana had no habitual traffic offender act. Accordingly, a person arrested and convicted of a traffic offense during this period of time was punished only by the trial court. Most certainly, no one in the State of Indiana, during this period of time, had any reason to believe that his or her driving privileges would be in jeopardy in the event that he or she had as many as three convictions for certain designated types of traffic offenses. The effect of the Indiana statute, in using convictions prior to the effective date of the Habitual Traffic Offender Act (September 1, 1972), is to inflict a second penalty for the driving offenses committed by a citizen of Indiana prior to the effective date. In today's automobile-oriented society, the loss of a person's driving privileges in the State for a period of ten years is a severe and crippling penalty affecting a person's ability to earn a livelihood,

as well as affecting a person's lifestyle. Such a penalty is so severe as to be criminal in nature and should not be imposed, except in instances in which the number of driving offenses necessary to elevate a person to the status of an habitual traffic offender have occurred after the effective date of the statute. Appellant does not challenge the right of the State of Indiana to enact an habitual traffic offender act and to suspend the driving rights of those who are convicted the requisite number of times subsequent to the effective date of such act.

Appellant is aware of Gryger v. Burke, 334 U.S. 728, 92 L.Ed. 1683, 68 S.Ct. 1256 (1948). However, there are factual differences in that in the Gryger v. Burke case, the person found to be an habitual criminal had three of the necessary four convictions after the effective date of the statute. Furthermore, Appellant herein asserts that the precedent of Gryger, if indeed

it is a precedent for this case, is in error and in conflict with the other decisions of this Court which define the nature of ex post facto laws.

It is submitted that the Indiana Supreme Court has failed to recognize the above deficiencies of the questioned statute. Appellant believes that the questions presented by this appeal are substantial and that they are of public importance.

Respectfully submitted,

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APPENDIX

APPENDIX A

JUDGMENT OF INDIANA SUPREME COURT DENYING PETITION TO TRANSFER

(Filed April 24, 1975, Billie R. McCullough, Clerk of the Indiana Supreme and Court of Appeals)

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ATTORNEY FOR APPELLEE

Theodore L. Sendak
Attorney General of Indiana
219 State House
Indianapolis, Indiana 46204

In the
Supreme Court of Indiana
No. 1-974 A 138 In the Court of Appeals

Irene D. Hamilton,	)	Appeal from the
	)	Vanderburgh
Appellant,	)	Circuit Court
(Defendant Below),	)	
	)	
v.	)	
	)	
State of Indiana, ex rel.	)	
Ralph W. Van Natta, Commissioner of Bureau of	)	The Honorable William H.
Motor Vehicles,	)	Miller,
	)	Presiding Judge
Appellee,	)	
(Plaintiff Below)	)	

Appellant's Petition to Transfer
denied this 18th day of September, 1975.

GIVAN, C.J.
DeBRULER, J., votes
to Grant

APPENDIX B

OPINION AND JUDGMENT OF THE
INDIANA COURT OF APPEALS

(Filed March 6, 1975, Billie R. McCullough, Clerk of the Indiana Supreme Court and Court of Appeals)

Attorneys for Appellant:

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Attorney for Appellee:

Theodore L. Sendak, Attorney General of Indiana, 219 State House, Indianapolis, Indiana 46204

In the
Court of Appeals of Indiana
First District

Irene D. Hamilton, Defendant-Appellant	)	
v.	)	NO. 1-974-A-138
State of Indiana, ex rel., Ralph W. Van Natta Commissioner of Bureau of Motor Vehicles, Plaintiff-Appellee	)	

Appeal from the Vanderburgh Circuit Court
The Honorable William H. Miller,
Presiding Judge

Robertson, C. J.

Hamilton brings this appeal from her conviction under the Habitual Traffic Offenders Statute contending that the statute is unconstitutional as an ex post facto law, bill of attainder and imposes double jeopardy.

We hold that the statute as applicable to Hamilton is constitutional.

On July 20, 1973, Hamilton was charged by affidavit with being an habitual traffic offender pursuant to IC 1971, 9-4-13-5. The affidavit specified seven traffic convictions, one offense and conviction occurring after September 1, 1972, the effective date of the act.

The trial court issued to Hamilton a rule to show cause why she should not be adjudged an habitual traffic offender. A hearing was held upon the show cause order after which the trial court adjudged Hamilton an habitual traffic offender and suspended her driver's license for ten years. This appeal follows.

All three of the issues raised by Hamilton involve challenges to the constitutionality of the act. She first argues that the Habitual Traffic Offenders Statute, IC 1971, 9-4-13-1 et seq., is an ex post facto law. However, that argument has previously been rejected by our Supreme Court in State ex rel. Van Natta v. Rising (1974), _____Ind. _____, 310 N.E.2d 873.

Hamilton next contends that the statute places her in double jeopardy arguing that since she had previously

received a penalty for the offense which triggered the action under this statute, the additional penalty imposed in this case places her in jeopardy twice for the same offense.

This argument is refuted by the following language of Justice Arterburn in State ex rel. Van Natta v. Rising, supra.

> "The operation of this statute, which results in the deprivation of the license to drive, is not a punishment as a result of a criminal proceeding, but is rather an exercise of the police power for the protection of the public. The appellee is not receiving increased punishment for the previous convictions, but is automatically falling into a class of persons prohibited from driving on the public highways for the protection of the remaining public using the highways."
>
> 310 N.E.2d at 875.

Hamilton finally contends that the statute constitutes an unconstitutional bill of attainder.

Hamilton argues that the statute creates a separate class of people--those persons who, prior to the enactment of the statute, had two or more convictions within a 10 year period for certain motor vehicle violations. Upon the first conviction after September, 1972, persons in this class are subject to being declared an habitual traffic offender, whereas persons without the class receive only the statutory penalty for the particular offense. Therefore, according to Hamilton, the legislature has imposed a penalty without judicial trial creating a bill of attainder.

A bill of attainder is a legislative act which inflicts punishment without a judicial trial. Cummings v. Missouri (U.S. 1867), 4 Wall. 277, 18 L.Ed. 356. The distinguishing feature

of a bill of attainder is the substitution of a legislative for a judicial determination of guilt. United States v. Brown (1965), 381 U.S. 437, 85 S.Ct. 1707. Only the clearest of proof will suffice to establish a statute unconstitutional on grounds that it is punitive rather than regulatory. Fleming v. Nestor (1960), 363 U.S. 603, 80 S.Ct. 1367.

It should be noted that the Habitual Traffic Offenders Statute imposes no penalty, punitive or otherwise, on persons with prior convictions for traffic offenses. The statute embodies no further implications of guilt than are contained in the original until the accused is convicted, in a judicial proceeding, of certain traffic offenses, at least one of which must have occurred after September, 1972. The finding of guilt in a judicial trial is implicit in the statute.

Once the statute imposes its sanctions upon a person convicted of the requisite

traffic offenses, the intent is purely regulatory, not punitive. The legislature enunciated the purpose of the statute as follows:

> "Purpose of law. - It is the purpose of this chapter [9-4-13-1---9-4-13-18] to reduce the number of motor vehicle accidents in this state and to provide greater safety to the motoring public by denying to habitual traffic offenders the privilege of operating a motor vehicle. [IC 1971, 9-4-13-1, as added by Acts 1972, P.L. 81 §1, p. 510]."

The statute merely seeks to ban from the public highways those individuals whose disregard for the traffic laws is inconsistent with the lawful regulation of an activity which involves the health and safety of the state citizenry.

> "The purpose of the law is to classify those who--in the interest of the public safety

and health--should be prohibited from using the highways. The same rationale could be used where a statute prohibits a person with impaired eyesight from driving. A classification based upon conditions existing prior to the statute, although retrospective in application, is not constitutionally infirm when the classification is relevant to the objective of the statute, in this case, public safety and health."

State ex rel. Van Natta v. Rising, supra, at 874-875.

The Habitual Traffic Offenders Statute is not a bill of attainder, an ex post facto law, nor does it impose double jeopardy.

Judgment affirmed.

Lowdermilk, J. concurs.

Hoffman, J. concurs by designation.

APPENDIX C

RULING OF INDIANA COURT OF APPEALS
ON PETITION FOR REHEARING

In the
Indiana Court of Appeals
No. 1-974 A 138

Irene D. Hamilton,	)	Appeal from the
	)	Vanderburgh
Appellant	)	Circuit Court
(Defendant Below),	)	
	)	
v.	)	
	)	
State of Indiana, ex	)	The Honorable
rel., Ralph W. Van	)	William H.
Natta, Commissioner of	)	Miller,
Bureau of Motor Ve-	)	Presiding Judge
hicles,	)	
	)	
Appellee	)	
(Plaintiff Below)	)	

Appellant's Petition for Rehearing denied this 8th day of April, 1975.

ROBERTSON, C. J.

(Filed December 10, 1975, Billie R. McCullough, Clerk of the Indiana Supreme Court and in the Court of Appeals)

In the
Supreme Court of Indiana
No. 1-974 A 138 In the Court of Appeals

Irene D. Hamilton,	)	Appeal from the
	)	Vanderburgh
Appellant	)	Circuit Court
	)	
v.	)	The Honorable
	)	William H.
State of Indiana, ex	)	Miller,
rel., Ralph W. Van Natta,	)	Presiding Judge
Commissioner of Bureau	)	
of Motor Vehicles,	)	
	)	
Appellee	)	

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Irene D. Hamilton, the Appellant above-named, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of Indiana, denying

the Appellant's Petition to Transfer from the Indiana Court of Appeals' decision affirming the trial Court's judgment against Appellant declaring her to be an habitual traffic offender and revoking her driver's license for a period of ten (10) years, which order of the Supreme Court was entered herein on the 18th day of September, 1975.

This appeal is taken pursuant to 28 U.S.C. §1257(2) and 2101(c).

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Counsel for Appellant

PROOF OF SERVICE

STATE OF INDIANA)
) SS:
COUNTY OF VANDERBURGH)

Edward W. Johnson respectfully shows to the Court:

1. That he is counsel for Appellant in the above-entitled cause.

2. That on the 10th day of December, 1975, he served a copy of the above Notice of Appeal to the Supreme Court of the United States, in the above-entitled cause, by depositing the same in the United States mail, charges prepaid, first class, properly addressed to Theodore W. Sendak, Attorney General, counsel for Appellee, 219 State House, Indianapolis, Indiana 46204.

JOHNSON, CARROLL and GRIFFITH
By: Edward W. Johnson
Counsel for Appellant

Edward W. Johnson, being first duly sworn, upon his oath says that the statements contained in the foregoing proof of service are true.

EDWARD W. JOHNSON

Subscribed and sworn to before me, a Notary Public in and for said County and State, this 10th day of December, 1975.

Carolyn S. McDonald
(Seal) Notary Public

My commission expires:
December 14, 1977

Court, U. S.
FILED
JAN 19 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-834

IRENE D. HAMILTON,

Appellant,

vs.

STATE OF INDIANA ex rel
RALPH W. VAN NATTA,
Commissioner of Bureau of
Motor Vehicles,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF INDIANA

MOTION TO DISMISS OR AFFIRM

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Lindsey, et al, v. Washington, 301 U.S. 397, 57 S.Ct. 797, 81 L.Ed. 1182	4
McDonald v. Massachusetts, 180 U.S. 311, 21 S.Ct. 389, 45 L.Ed. 542	4 & 5
Moore v. Missouri, 159 U.S. 673, 16 S.Ct. 179, 40 L.Ed. 301	5
State ex rel. Van Natta v. Rising, (1974) ——Ind.——, 310 N.E.2d 873	4

Other Authorities

Constitution of the United States, Article I, Section 10	2
I.C. 1971, 9-4-13-3 (Burns' Ind.Ann.Stat. § 47-2336)	2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-834

IRENE D. HAMILTON,

Appellant,

vs.

STATE OF INDIANA ex rel
RALPH W. VAN NATTA,
Commissioner of Bureau of
Motor Vehicles,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF INDIANA

MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 16, the Appellee moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Indiana on the ground that it is manifest that the questions on which the decision of the cause depend are so inconsequential and of such little substance as not to need further argument.

I.

THE STATE STATUTE INVOLVED AND THE NATURE OF THE CASE

A.

THE STATUTE

This appeal raises the question of whether certain provisions of the Indiana Habitual Traffic Offender Act, I.C. 1971, 9-4-13-3 (Burns' Ind.Ann.Stat. § 47-2336), are *ex post facto* laws and therefore in violation of and repugnant to the United States Constitution, Article I, Section 10. This statute provides that a person may be declared an habitual traffic offender and his driving privileges restricted for a period of not more than ten (10) years upon the occurrence of a certain number of specified traffic convictions within a ten (10) year period at least one of such offenses occurring on or after the effective date of the statute.

B.

THE PROCEEDINGS BELOW

Subsequent to the effective date of the statute here involved, the appellant was convicted of the offense of driving while under the influence of intoxicating liquor. Prior to the effective date of the statute, and within the ten (10) year statutory period, the appellant committed six (6) traffic offenses, which offenses are of the number and type sufficient to bring her within the scope of the statute.

A complaint in the form of an affidavit was filed against the appellant in the Circuit Court of Vanderburgh County, Indiana, to declare her to be an habitual traffic offender.

The appellant has never denied the truth of the convictions for the seven (7) serious driving offenses set out in the affidavit.

Prior to trial, the appellant raised by way of Special Defenses the issue that the statute upon which the State's claim was based, I.C. 1971, 9-4-13-3 (Burns' Ind.Ann.Stat. § 47-2336) was unconstitutional in that it violates the United States Constitution, Article I, Section 10 which provides that no person shall be convicted of an offense under way *ex post facto* law.

The trial court entered judgment against the appellant, and she appealed to the Indiana Court of Appeals. The Indiana Court of Appeals affirmed the trial court's judgment and the appellant sought a rehearing in that court which was denied. Thereafter, the appellant petitioned the Supreme Court of Indiana to review, or transfer, the judgment of the opinion of the Indiana Court of Appeals. The Supreme Court of Indiana denied the Petition to Transfer without opinion, which denial affirmed the judgment of the Indiana Court of Appeals. *Hamilton v. State*, (1975) —— Ind.App.——, 323 N.E.2d 659.

II.

ARGUMENT

THE CASE PRESENTS NO SUBSTANTIAL QUESTION NOT PREVIOUSLY DECIDED BY THIS COURT

The United States Supreme Court, in applying the *ex post facto* prohibition of the Federal Constitution to state laws, accepts the meaning ascribed to them by the highest court of the state. *Lindsey, et al, v. Washington,* 301 U.S. 397, 57 S.Ct. 797, 81 L.Ed. 1182. The Indiana Supreme Court has rendered its opinion as to the application of the *ex post facto* prohibition on the statute now in question. *State ex rel. Van Natta v. Rising,* (1974) —— Ind. ——, 310 N.E.2d 873. In that decision the Indiana Supreme Court held that the defendant was not being punished for acts which occurred prior to the enactment of the statute, but rather was falling into a class of persons prohibited from driving on the public highways for the protection of the remaining public using the highways. Such decision is not inconsistent with the rulings of this Court on the application of the *ex post facto* prohibition.

While the statute under attack herein is civil in nature, it may be likened to the various habitual criminal statutes enacted by the several states. This Court has previously determined that a sentence as an habitual criminal is not to be viewed as either a new jeopardy or additional penalty for the earlier crimes. It is a stiffened penalty for the latest crime, which is considered to be an aggravated offense because a repetitive one. *Gryger v. Burke,* 334 U.S. 728, 68 S.Ct. 1256, 92 L.Ed. 1683; *Graham v. West Virginia,* 224 U.S. 616, 32 S.Ct. 583, 56 L.Ed. 917; *McDon-*

ald v. Massachusetts, 180 U.S. 311, 21 S.Ct. 389, 45 L.Ed. 542; *Moore v. Missouri,* 159 U.S. 673, 16 S.Ct. 179, 40 L.Ed. 301.

It is clear from the above cases that the appellant herein presents no substantial federal question not previously decided by this Court, and that the Indiana Court of Appeals, in applying the prior decision of the Indiana Supreme Court, correctly affirmed the decision of the trial court below.

III.

CONCLUSION

WHEREFORE, appellee respectfully submits that the questions upon which this cause depend are so unsubstantial as not to need further argument, and appellee respectfully moves the Court to dismiss this appeal or, in the alternative, to affirm the judgment entered in the cause by the Supreme Court of Indiana.

Respectfully submitted,

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